

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CNX GAS CORPORATION, and
CNX GAS COMPANY LLC

Plaintiffs,

v.

05cv1574

ELECTRONICALLY FILED

CDX GAS, LLC,

Defendant,

v.

CONSOL ENERGY, INC.,

Counter-Defendant.

Order of Court Re Motions in Limine

Pending before this Court are several motions in limine filed by the parties. After careful consideration of the motions and responses thereto, the Court rulings on said motions in limine are as follows:

- (1) The Motion in Limine to Preclude Testimony or Argument Related to the Existence or Contents of Alleged Written Contracts or Agreements Not in the Record filed by Consol (doc. no. 377) is DENIED WITHOUT PREJUDICE.
- (2) The Motion in Limine to Exclude Testimony of Fred Capitosti filed by Consol (doc. no. 379) is GRANTED.
- (3) The Motion in Limine to Limit Issues at Trial to Claim 1 of the '523 Patent filed by Consol (doc. no. 381) is DENIED.
- (4) The Motion in Limine to Exclude the Declaration of Experimental Use and Any Reference or Evidence Related Thereto filed by Consol (doc. no. 383) is GRANTED.
- (5) The Motion in Limine to Exclude the Testimony of Defendant's Witness Dr. Robert Enick filed by Consol (doc. no. 385) is GRANTED.
- (6) The Motion in Limine to Exclude Certain Testimony of Defendant's Expert William Fleckenstein filed by Consol (doc. no. 387) is DENIED WITHOUT PREJUDICE.

- (7) The Motion in Limine To Exclude Any Reference to Patent Infringement filed by Consol (doc. no. 389) is GRANTED, except as briefly referenced by the Court in any jury instructions.
- (8) The Motion in Limine to Exclude Any Reference to Claims and Patents Not at Issue filed by Consol (doc. no. 391) is DENIED WITHOUT PREJUDICE.
- (9) The Motion in Limine to Preclude Evidence of Post-Critical Date Experimentation filed by Consol (doc. no. 393) is DENIED WITHOUT PREJUDICE.
- (10) The Motion in Limine to Exclude Certain Testimony of Richard Toothman filed by Consol (doc. no. 395) is GRANTED.
- (11) The First Motion in Limine to Preclude Testimony of Gerald Bjorge, Esq. filed by CDX Gas (doc. no. 397) is GRANTED.
- (12) The Second Motion in Limine to Preclude Lay Opinion Testimony filed by CDX Gas (doc. no. 399) is DENIED WITHOUT PREJUDICE.
- (13) The Third Motion in Limine to Limit Testimony of Mary Ann Black filed by CDX Gas (doc. no. 401) is DENIED WITHOUT PREJUDICE.
- (14) The Fourth Motion in Limine to Limit Testimony of Richard Toothman filed by CDX Gas (doc. no. 403) is GRANTED.
- (15) The Fifth Motion in Limine to Preclude Testimony of Richard Molski filed by CDX Gas (doc. no. 405) is GRANTED.
- (16) The Sixth Motion in Limine to Exclude Evidence of Equitable Issues filed by CDX Gas (doc. no. 407) is GRANTED.

SO ORDERED this 15th day of April, 2008.

s/Arthur J. Schwab
Arthur J. Schwab
United States District Judge

cc: All counsel of record